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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

FOO/143625

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 05, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on October 23, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether it was proper for the agency to include minor child TL in his father's household rather than in the Petitioner's household for purposes of FS.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Katherine May  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 19, 2012, the father of minor child TL completed a review of his FS case and reported his minor son TL as a member of the household. Benefits were approved for a household size of two including TL.

3. On August 13, 2012, the Petitioner applied for FS benefits. She included her minor son TL in the application as a household member.
4. On September 5, 2012, the agency issued a Notice of Decision to the Petitioner approving a household size of one and FS benefits of \$16/month effective September 1, 2012. The agency did not include TL in the Petitioner's household because he was part of his father's FS group.
5. On September 5, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

A person cannot be a member of more than 1 food unit and 1 FS group in the same month. FoodShare Handbook (FSH) § 3.4.1.

The FSH outlines the procedure the agency is to utilize to determine which household group a child resides in for purposes of FS benefits. 3.2.1.1 Joint or Shared Physical Custody of Children

Children are included in the household where they reside when they are under the care and control of a parent a person's biological, step, or adoptive mother or father regardless of age. Parenthood doesn't have to be verified or other caretaker in that household. There may be situations when the residence of a child is not easily determined. There are many methods that can be used to determine the child's residence. If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit.

If the parents cannot or will not decide, compare the parents' activities and responsibilities against the following list and determine which one is exercising more control than the other:

1. If the parents reside in different school districts, where does the child attend school? Who selected the school?
2. Who assists the child with homework or school-related tasks?
3. Are there tuition costs for the child's education? If so, who pays those costs?
4. If the child is enrolled in day care, who arranges for and pays these costs?
5. Who is responsible for taking the child to and from school and/or day care?
6. Which parent is listed as the contact for emergencies at the child's school or day care provider?
7. Who arranges medical and dental care for the child? Who selects the physician and dentist?
8. Who maintains the child's medical records?
9. Who initiates decisions regarding the child's future?
10. Who responds to medical or law enforcement emergencies involving the child?

11. Who spends money on food or clothing for the child when the child visits the absent parent?

12. Who disciplines the child?

13. Who plays with the child and arranges for entertainment?

14. Are more of the child's toys, clothing, etc. kept at one parent's home than the other's?

Only one parent can receive FS for a child. If you still cannot determine which food unit the child should be in, the caretaker that first applies would be eligible. Use the best information available to make your decision, and document in case comments the basis of your determination. If you still cannot determine which food unit the child should be in, call the CARES Client Assistance for Reemployment and Economic Support call center.

FSH § 3.2.1.1.

The agency presented no evidence in this case that it properly analyzed which FS group TL should be included in for purposes of FS. Instead, it included TL in his father's FS group because his father applied first and then denied his inclusion in the Petitioner's FS group because she applied later. This is not the proper analysis. The agency must make a proper determination under FSH § 3.2.1.1 of the child's residence and which parent will receive FS for him.

### **CONCLUSIONS OF LAW**

The agency did not make a proper determination when it denied inclusion of TL in the Petitioner's household for purposes of FS benefits.

**THEREFORE, it is**

### **ORDERED**

That this matter be remanded to the agency to conduct an analysis under FSH § 3.2.1.1 and determine whether minor child TL is properly included in the household of his father or of the Petitioner effective September 1, 2012 in accordance with the procedure in that section. A new Notice of Decision shall be issued to the Petitioner based on the agency's determination after that analysis. These actions shall be completed within 10 days of the date of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

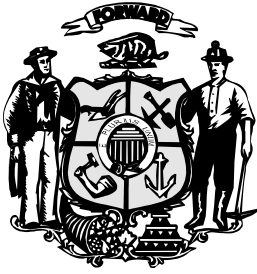
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 26th day of November, 2012

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 26, 2012.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability